

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF MASSACHUSETTS  
3 MDL NO. 1456  
4 CA NO. 01-12257-PBS  
5

6 IN RE:  
7 AVERAGE WHOLESALE PRICE  
8 PHARMACEUTICAL LITIGATION  
9

10 BEFORE: The Honorable Patti B. Saris  
11

12 STATUS CONFERENCE  
13  
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15 John Joseph Moakley United States Courthouse  
16 Courtroom No. 13  
17 One Courthouse Way  
18 Boston, MA 02210  
19 Monday, March 8, 2004  
20 3:07 P.M.

21 Cheryl Dahlstrom  
22 Official Court Reporter  
23 United States District Court  
24 595 Main Street, Room 514  
25 Worcester, MA 01608-2076  
Mechanical Steno - Transcript by Computer

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1 say it's seven, eight, nine months down the road before we get  
2 to resolution points, which is probably realistic.

3 Then these other companies have basically sat around  
4 for two or three years waiting. We get to resolution points,  
5 and then we're going to be in a situation, most likely with  
6 respect to those companies, where they're going to say, hey,  
7 you haven't seen my stuff. I'm not like those other  
8 companies. Then we start all over.

9 THE COURT: That may be, but the truth is --

10 MR. BERMAN: There were two, three years.

11 THE COURT: You're more experienced than I am. I  
12 have never had a case of this magnitude. I would imagine it's  
13 one of the largest cases most people in this room have dealt  
14 with. We've got to come up with a way of having a trial  
15 balloon.

16 I don't think a few drugs here -- taking every  
17 company across the board is going to do that because, for one  
18 thing, it won't work for class certification. I won't be able  
19 to decide the juridical linkage issue. I think there's good  
20 case law for you for it. I've got to decide whether they're  
21 typical. I won't be able to certify a class involving every  
22 drug in a company. It will postpone almost indefinitely the  
23 class certification issue.

24 MR. BERMAN: We're asking you in our proposal to  
25 certify just a few drugs for each company. I don't think it's

1 might be a better way to go.

2 MR. SOBOL: In this situation, we have to all be  
3 flexible. I just want you to be mindful --

4 THE COURT: It would be better --

5 MR. SOBOL: -- the population of people who have been  
6 affected by the high price of drugs that relates to AWP is an  
7 issue that has been looked at time and time again.

8 THE COURT: Has anyone done multiple defendant  
9 classes?

10 MR. SOBOL: No. This is the only multiple defendant.

11 THE COURT: I am thinking of going defendant by  
12 defendant mostly because I'm finding how complex this is. My  
13 guess is each defendant does it a little differently. You  
14 need to think about it that way, both in terms of relief and  
15 in terms of manageability and typicality and all that kind of  
16 thing.

17 You can persuade me contrary, I suppose, but my  
18 initial instinct is I'm going to have to do it that way.  
19 That's why I was thinking in terms of resolving some  
20 companies.

21 How many would you think would make sense if we did,  
22 you know, some companies sort of on a fast track and the  
23 others -- you know, we have so many lawyers involved. I can't  
24 believe we can't do the others on a slower track.

25 MR. BERMAN: We've been talking while --

1 C E R T I F I C A T E

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4 I, Cheryl Dahlstrom, Official Reporter of the United  
5 States District Court, do hereby certify that the foregoing  
6 transcript, from Page 1 to Page 54, constitutes, to the best  
7 of my skill and ability, a true and accurate transcription of  
8 my stenotype notes taken in the matter of In Re Average  
9 Wholesale Price Pharmaceutical Litigation.

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